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Supreme Court, U.S.
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No. 99-391

IN THE

Supreme Court of the United States

ROBIN FREE and RENEE FREE,

Petitioners,

v.

ABBOTT LABORATORIES, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF

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INTRODUCTION

To accept the Fifth Circuit's view, this Court would have to conclude that Congress, in enacting 28 U.S.C. § 1367, intended to make a change in clear pre-existing law by overturning the settled rule of diversity jurisdiction set forth in *Zahn v. International Paper*, 414 U.S. 291 (1973). Respondents cannot and do not advance any reason to conclude that Congress intended to make such a change. Indeed, Respondents do not dispute that the whole congressional policy of steadily limiting diversity jurisdiction over cases otherwise tried in state courts — and the specific reinforcement of those limits in Section 1367(b) — is profoundly inconsistent with the results produced by the Fifth Circuit view they defend: a dramatic expansion of the number and magnitude of diversity suits in which plaintiffs lacking an independent basis for federal jurisdiction piggyback their way into federal court using Federal Rules 20 and 23.

Respondents, accordingly, must rest their argument entirely on the assertion that the language of Section 1367(a) simply gives this Court no choice but to hold that Congress made a change of law that it manifestly did not intend to make. That argument, however, is incorrect. Section 1367(a)'s language requires "original jurisdiction" as a predicate to any supplemental jurisdiction. By adopting (as effectively a matter of first impression) a proper and natural understanding of the matter-in-controversy requirement of the diversity statute, 28 U.S.C. § 1332, this Court would avoid attributing to Section 1367(a) a result that Congress plainly did not intend. That is what this Court should do.

In particular, Section 1367 provides that federal courts must have original jurisdiction before the exercise of supplemental jurisdiction is appropriate. 28 U.S.C. § 1367(a). In the diversity context, this means that the matter-in-controversy requirement must be met. 28 U.S.C. § 1332(a). Properly understood, the matter-in-controversy requirement operates in the same way as the complete diversity requirement: just as all plaintiffs in a

civil action must be diverse from all defendants in order for there to be original federal jurisdiction over any part of the action, all plaintiffs also must have claims that meet the jurisdictional minimum or else original jurisdiction is lacking over the entire action. There is no way to "half-satisfy" the matter-in-controversy requirement; either all plaintiffs have the amount in controversy, and there is original jurisdiction over the entire civil action, or not all plaintiffs meet the requirement, and jurisdiction over the entire action is lacking. Under that straightforward reading of Section 1332 — treating the matter-in-controversy requirement in parallel with the complete-diversity requirement — there would be no original jurisdiction over a class action involving unnamed plaintiffs lacking the amount in controversy, and so there would be no occasion for the exercise of supplemental jurisdiction under Section 1367(a), thus preserving *Zahn*. Not surprisingly, Respondents effectively acknowledge that their case depends on rejecting this interpretation of the matter-in-controversy requirement of Section 1332 and treating it differently from the complete-diversity requirement.

Respondents' only argument for their contrary view is to rely on several precedents allowing dismissal of parties with jurisdictionally insufficient claims in order to permit the case to go forward. But, critically, that result provides no basis whatsoever for supporting one rather than the other of the two possible views of the matter-in-controversy rule: the result is proper if the requirement bars original jurisdiction over the claims of any party until the improper parties are dropped (as they may be, *see* Fed. R. Civ. P. 21; *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 832-33 (1989)); and it is also proper if the requirement defeats jurisdiction over the claims of just the improper parties. Those decisions thus did not in any way turn on resolving the precise nature of the matter-in-controversy rule. With the enactment of Section 1367, however, an important concrete consequence now turns on the proper characterization of Section 1332's matter-in-controversy rule.

The view of that rule proposed by Petitioners should be adopted, not only because it treats the matter-in-controversy rule similarly to the complete-diversity rule, but because it permits Section 1367 to function coherently and because it accurately reflects the absence of any congressional intent to overturn *Zahn*.

ARGUMENT

I. THE REQUIREMENTS OF PARTICULAR ORIGINAL-JURISDICTION STATUTES DETERMINE WHETHER THERE IS ORIGINAL JURISDICTION AS A PREDICATE FOR SUPPLEMENTAL JURISDICTION UNDER SECTION 1367.

Section 1367 by its express terms requires original jurisdiction as a prerequisite to the exercise of supplemental jurisdiction. *See* 28 U.S.C. § 1367(a) ("in any civil action of which the district courts have original jurisdiction, the district court shall have supplemental jurisdiction" over certain other claims). That language directs the party invoking supplemental jurisdiction, at the threshold, to turn to the statutes conferring original jurisdiction and show that the action meets the conditions for original jurisdiction set forth in the original-jurisdiction statutes. Respondents' argument rests on the contention that, regardless of which original-jurisdiction provision is invoked, there is original jurisdiction whenever "'original jurisdiction' over some *claim or claims*" exists *and* that determination is always independent of what other claims or parties are present. Resp. Br. at 9 (emphasis added). But that position is plainly incorrect, for the presence of original jurisdiction over *any* claim, for *some* jurisdictional provisions, *does* turn on what other claims or parties are in the action.

This is concededly so for the complete-diversity requirement. Respondents admit:

> with respect to the complete diversity requirement [of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1807)], it is true that the presence of a single plaintiff

> who is a citizen of the same State as a single defendant defeats jurisdiction over the *entire* action, at least where the relevant parties are indispensable.

Resp. Br. at 14 (emphasis added); *see Wisconsin Dep't of Corrections v. Schacht*, 524 U.S. 381, 387 (1998) ("Where original jurisdiction rests upon Congress' statutory grant of 'diversity jurisdiction,' this Court has held that one claim against one nondiverse defendant destroys that original jurisdiction."); *cf. Finley v. United States*, 490 U.S. 545, 553 n.6 (1989) (interpreting Federal Tort Claims Act to provide district courts no authority to decide a "case" that includes a claim against a private defendant "since the FTCA provides jurisdiction only for claims against the United States.")[1] Accordingly, there is no original jurisdiction over any claim where Section 1332 is invoked but complete diversity is lacking. That is why Section 1367(a) leaves the complete-diversity rule unimpaired. Otherwise, original jurisdiction over a particular diverse plaintiff would trigger supplemental jurisdiction over non-diverse plaintiffs, obliterating the complete-diversity rule.

In contrast, original jurisdiction based on Section 1331 does take claims one at a time. This Court's decision in *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156 (1997), confirms that fact, which is as well-established for Section 1331 as the opposite approach is for the complete-diversity requirement. Federal question jurisdiction exists over a particular claim arising under federal law regardless of what other claims are in the case, and the federal-question jurisdiction is limited to that claim: as the Court explained, that is the necessary premise of Congress's provision of "supplemental" jurisdiction over other claims in the case. *Id.* at 166.

1. Respondents' Amicus Product Liability Advisory Council ("PLAC") also concedes this point: " 'A case falls within the federal district court's 'original' jurisdiction only if diversity of citizenship among the parties is complete, *i.e.*, only if there is no plaintiff and no defendant who are citizens of the same State.' " PLAC Amicus Br. at 13 (*quoting Wisconsin Dep't of Corrections*, 524 U.S. at 388).

Accordingly, it is clear that original jurisdiction sometimes is determined by looking at a particular claim in isolation and sometimes it is not. The question in this case is whether the matter-in-controversy rule of diversity jurisdiction is better understood as being like the complete-diversity rule or as being like the federal-question rule. The better answer is that it is like its companion Section 1332 rule, so that original jurisdiction over some plaintiffs' claims cannot be assessed independently of all other plaintiffs' claims. For original jurisdiction to exist at all, it is the entire set of plaintiffs that must have the required amount in controversy, just as it is the entire set of plaintiffs that must be diverse from the defendants.[2]

II. UNDERSTANDING THE MATTER-IN-CONTROVERSY RULE TO REQUIRE THAT ALL PLAINTIFFS HAVE THE JURISDICTIONAL AMOUNT IS IN ACCORD WITH PRIOR DECISIONS OF THIS COURT.

Respondents contend that it would be "flatly inconsistent with settled law" to hold that the claims of each plaintiff in a diversity action must satisfy the jurisdictional minimum in order for there to be original jurisdiction at all. Resp. Br. at 12. Respondents base this contention primarily on the fact that the typical remedy in cases where some plaintiffs have met the jurisdictional minimum and others have not has been to dismiss those plaintiffs with claims for less than the jurisdictional amount. *See, e.g., Clark v. Paul Gray*, 306 U.S. 583, 590 (1939). But even Respondents effectively recognize that the conclusion they urge cannot be drawn from the remedial practice they identify.

As Respondents concede in the complete-diversity context, "the Court can cure a lack of complete diversity by simply dismissing a non-diverse party and retaining original jurisdiction over the rest of the action." Resp. Br. at 15 n.4; *see* Fed. R. Civ.

2. This conclusion, specific to only two requirements of a single basis of federal-court jurisdiction that historically has been subject to limitation as matter of congressional policy, does not render supplemental jurisdiction "superfluous." Resp. Br. at 11.

P. 21; *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 829 (1989); *see also Wisconsin Dep't of Corrections*, 524 U.S. at 388. Similarly, a federal court can cure a failure of original jurisdiction in the matter-in-controversy context by the simple expedient of dismissing those parties without the requisite amount. This cure does *not* mean that the court had federal jurisdiction over any of the parties prior to the dismissal of the parties lacking the jurisdictional amount. To the contrary, as discussed above, it is clear in the complete-diversity context that the opposite is true. *See Wisconsin Dep't of Corrections*, 524 U.S. at 388; *Newman-Green, Inc.*, 490 U.S. at 829; *accord* Fed. R. Civ. P. 21 (courts may correct misjoinder that otherwise would defeat jurisdiction and require dismissal of the action by dropping or adding parties). Respondents' invocation of the remedial cases thus proves nothing.

Perhaps recognizing the logical flaw in their first position, Respondents also seek precedential support in *Zahn v. International Paper*, 414 U.S. 291 (1973), contending that, although *Zahn* rejected original jurisdiction, it "did not address the distinct (but related) question" of whether, after finding that the named plaintiffs had the jurisdictional minimum, a federal court "could thereafter exercise common-law ancillary jurisdiction over the absent class members." Resp. Br. at 19. But that reading of *Zahn* is inconsistent with the result in the case. The Court in *Zahn* had to reject the exercise of ancillary jurisdiction over class members with claims for less than the jurisdictional amount or it would have had to reverse the denial of class certification. *Zahn*, 414 U.S. at 291.

The *Zahn* opinion does not explicitly explain *why* ancillary jurisdiction was inappropriate, and it can, therefore, hardly mandate Respondents' position even at the level of rationale. In fact, the opinion supports Petitioners' view of the matter-in-controversy rule more than Respondents'. The *Zahn* opinion suggests that the nature of the matter-in-controversy rule precluded ancillary jurisdiction over plaintiffs with claims for less than the jurisdictional minimum because of a lack of original

jurisdiction that left the original jurisdiction predicate for the exercise of ancillary jurisdiction unsatisfied. The *Zahn* majority explicitly stated that "this case is governed by the rationale of this Court's prior cases construing the statutes defining the jurisdiction of the District Court." *Id.* at 292. The only statute "defining the jurisdiction of the district court" that was relevant to the case was Section 1332, and specifically the matter-in-controversy requirement. This explanation suggests that the Court was rejecting the use of ancillary jurisdiction *because* the operation of a rule of original jurisdiction precluded original jurisdiction itself (leaving no predicate for any invocation of ancillary jurisdiction).

That conclusion is bolstered by the Court's very silence about ancillary jurisdiction (despite the discussion of ancillary jurisdiction in the dissent, *see Zahn*, 414 U.S. at 305 (Brennan, J., dissenting)). If the Court had been relying on a principle that ancillary jurisdiction was lacking even though there was original jurisdiction, it would have been a then-novel principle. When, three years after *Zahn*, the Court did base its decision on such a principle, analyzing particular jurisdictional statutes to preclude supplemental jurisdiction despite original jurisdiction, it stated as much explicitly. *See Aldinger v. Howard*, 427 U.S. 1 (1976). In particular, in *Aldinger*, the Court addressed and rejected a contention that common law pendent-party jurisdiction was available over plaintiffs asserting claims related to an action that *was* within the district court's original jurisdiction under 28 U.S.C. § 1343. *Id.* at 17-18.[3] In *Zahn* there is no comparable discussion, and *Zahn* is therefore most naturally read to rest on its simplest basis: that original jurisdiction itself could

3. The Court in *Aldinger* also extensively analyzed a series of cases addressing the issue of when the exercise of pendent jurisdiction was appropriate, and did not ever mention *Zahn* — a further indication that the supplemental jurisdiction issue in *Zahn* was controlled by an original jurisdiction rule unique to the diversity context. *See Aldinger*, 427 U.S. at 6-16.

not be established independently of and as a predicate to ancillary jurisdiction over the unnamed class members.

In sum, Petitioners' understanding of the matter-in-controversy rule makes sense of the language of *Zahn* and of the majority's decision not to discuss ancillary jurisdiction. It also places the matter-in-controversy requirement in accord with the other requirement of 28 U.S.C. § 1332, the complete-diversity requirement, which requires that all plaintiffs be diverse from all defendants in order for courts to have original jurisdiction over the civil action.[4] Far from being "flatly inconsistent with settled law," Petitioners' understanding of the matter-in-controversy rule is in accord with the relevant decisions of this Court.

III. INTERPRETING THE MATTER-IN-CONTROVERSY REQUIREMENT AS MANDATING THAT ALL PLAINTIFFS SATISFY THE JURISDICTIONAL MINIMUM RESULTS IN A COHERENT SUPPLEMENTAL JURISDICTION SCHEME.

As Petitioners set forth in their opening brief, Respondents' interpretation of Section 1367 leads to results that are unquestionably absurd. *See* Pet. Br. at 23-25. Under Respondents' reading of Section 1367, Plaintiffs with claims for less than the jurisdictional minimum could freely join a

4. Respondents' contention that *Supreme Tribe of Ben Hur v. Cauble*, 255 U.S. 356 (1921), somehow mandates a contrary result is unconvincing. *See* Resp. Br. at 21. As this Court has recognized, the expansive reading courts have given to *Ben-Hur* (which dealt only with a situation where ancillary jurisdiction over non-diverse class members was necessary to dispose of trust assets before the Court, *see Ben-Hur*, 255 U.S. at 366) makes it all the more important that the matter-in-controversy rule be interpreted narrowly. *See Snyder v. Harris*, 394 U.S. 332, 340 (1969) (in light of *Ben-Hur*, "[t]o allow aggregation of claims where only one member of the entire class is of diverse citizenship could transfer into the federal courts numerous local controversies involving exclusively questions of state law.").

single plaintiff with the jurisdictional amount at the outset of the action under Fed. R. Civ. P. 20, even though Section 1367(b) would bar those very same individuals from joining or intervening in the action under Federal Rules 19 or 24. Respondents do not dispute that such a result is nonsensical, but they attempt to brush it off by stating that "this case is about the exercise of supplemental jurisdiction over claims under Rule 23, not Rule 20." Resp. Br. at 23.

That answer is not good enough. The interpretation of the matter-in-controversy rule of Section 1332 that is directly at issue here has consequences for the application of Section 1367 in both class actions and non-class actions. Rule 20 (applied to joinder of plaintiffs) is as missing from Section 1367(b) as is application of Rule 23. The incoherence of the consequences for non-class actions where plaintiffs are joined under Rule 20 — an incoherence not disputed by Respondents — necessarily weighs against Respondents' view of the proper characterization of the matter-in-controversy rule. *See United States v. X-Citement Video, Inc.*, 513 U.S. 64, 68 (1994) (consequences of interpretation beyond those occurring specifically in the case *sub judice* to be considered in deciding whether to adopt particular statutory interpretation). Petitioners' characterization of the matter-in-controversy rule would avoid that incoherence because the presence of plaintiffs with claims for less than the jurisdictional amount would defeat original jurisdiction at the outset, leaving no predicate for the invocation of supplemental jurisdiction.

Respondents conclude their one-page discussion of the nonsensical results of their construction by summarily stating that the anomalies Petitioners have described "do not give courts license to ignore the plain text of the statute." Resp. Br. at 23. That response is simply a diversion. As already explained, Section 1367(a) expressly requires resort at the outset to the requirements of the pertinent original-jurisdiction provision, and Petitioners' characterization of the matter-in-controversy rule

of Section 1332 is fully consistent with all relevant statutory text. No statutory text requires the incoherence Respondents promote.

IV. READING THE MATTER-IN-CONTROVERSY RULE TO REQUIRE THAT ALL PLAINTIFFS HAVE CLAIMS SATISFYING THE JURISDICTIONAL MINIMUM AVOIDS ATTRIBUTING TO CONGRESS A MANIFESTLY ABSENT INTENT TO OVERTURN *ZAHN*.

While Respondents and their *amici* spend considerable time attempting to establish that Congress rationally *could have* intended Section 1367 to overrule *Zahn*, they never seriously contend that Congress *actually meant* for Section 1367 to overturn the settled rule of *Zahn* and thus to effect a dramatic expansion of the number of diversity cases brought into federal court (originally or by removal). Regardless of what Congress could rationally have meant to do, no reasonable observer could conclude that Section 1367 was meant to overturn *Zahn*. Because Petitioners' understanding of the matter-in-controversy rule, as well as of Section 1367(a)'s prerequisite of original jurisdiction, actually reflects congressional intent that *Zahn* not be overruled, it should be preferred.

A. The Structure And Operation Of Section 1367 As It Applies To Diversity Cases Makes It Clear That Congress Did Not Intend To Overrule *Zahn*.

It is ludicrous to believe that Congress meant Section 1367 to operate as Respondents contend, because accepting Respondents' argument requires the conclusion that Congress meant to draft an incoherent statute. It cannot be that Congress intended to invite plaintiffs lacking the requisite jurisdictional sum to join state-law actions in federal court for convenience using Rule 20, while simultaneously preventing plaintiffs lacking the jurisdictional amount from intervening in or joining state law actions in federal court to protect their interests using

Rules 19 or 24. *See* 28 U.S.C. § 1367(b). Congress did not intend to lock all of the windows of the federal courthouse while leaving the front door wide open.

Respondents, sensibly, never argue this point directly, and instead treat the omission of Rule 23 from Section 1367(b) as perhaps a drafting error, and contend that this Court should not presume to correct congressional drafting errors, but should leave that to Congress. *See* Resp. Br. at 26. But Petitioners have, in fact, set forth a permissible interpretation of Section 1367(a), as well as of Section 1332, that produces a coherent result consistent with evident congressional policy. In the face of such an interpretation, resort to a "drafting mistake" conclusion is unnecessary and inappropriate. Indeed, Respondents themselves undermine their premise that the exclusion of Rule 23 from Section 1367(b) was a drafter's mistake. They observe that even the language they assert Congress would have adopted if it had wanted to preserve the *Zahn* rule — namely, including Rule 23 in the list of enumerated exceptions in Section 1367(b) — would not have prevented the absurd results created by Respondents' analysis of the statute. Resp. Br. at 23 ("The anomaly identified by Petitioners would not be solved by the addition of Rule 23 to subsection (b)."). So, as Respondents admit, in order to accept their understanding of Section 1367 and the matter-in-controversy rule, this Court would have to conclude that Section 1367(a) contains not one but two major drafting errors — the exclusion of both Rule 23 and Rule 20 (as applied to the joinder of plaintiffs) from Section 1367(b)'s list of enumerated exclusions. The far better conclusion is not that Congress was so sloppy, but that Congress had the same understanding of the matter-in-controversy rule as Petitioners, an understanding that made it unnecessary to include a reference to the application of Rules 20 and 23 to plaintiffs' claims. This Court should not read the statute so as to require acceptance of multiple major errors; rather, the result available under the statutory language and reflecting the clear intent of the structure of Section 1367 as a whole is the result to be preferred. *See United States v.*

Hartwell, 73 U.S. 385, 6 Wall. 385, 396 (1868) (in construing statute court should adopt that sense of words which best harmonizes with context and promotes policy and objectives of legislature) (*cited in King v. St. Vincent's Hospital*, 502 U.S. 215, 221 n.10 (1991)).

B. The Legislative History Confirms That Congress Did Not Intend To Overrule *Zahn*.

The legislative history of Section 1367, fairly read, confirms what the language and structure of the statute already make clear: Section 1367 was not meant to overturn *Zahn*. Respondents' argument about the legislative history does not even purport to establish the contrary. Respondents have shown nothing to undermine Petitioners' straightforward contention with regard to the legislative history: that what it says, and what it *does not* say, confirm what the language and structure of Section 1367 already show, namely, that Congress did not intend to change settled pre-existing law by overturning *Zahn*.[5]

Respondents' discussion of the legislative history, instead, piggybacks on their only real argument in the case, namely, that the result they urge is unavoidably compelled by the statutory text, which, Respondents say, legislative history cannot overcome. Thus, Respondents have to mischaracterize Petitioners' legislative history argument, stating that Petitioners "ask this Court to ignore [Section 1367] altogether, and decide the case by reference to a single sentence and footnote from a committee report." Resp. Br. at 24. But, as already explained,

5. Indeed, all three circuit courts that have discussed the legislative history of Section 1367, regardless of whether the court eventually held *Zahn* overturned, have concluded that the legislative history indicates that Section 1367 was not meant to overrule *Zahn*. *See Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 220-21 (3d Cir. 1999); *Leonhardt v. Western Sugar Co.*, 160 F.3d 631, 640 (10th Cir. 1998); *Free v. Abbott Labs. Co.*, 51 F.3d 524, 528 (5th Cir. 1995); *see also Russ v. State Farm Mutual Ins.*, 961 F. Supp. 808, 814 (E.D. Pa. 1997) (discussing legislative history).

the premise that Petitioners' position ignores the text of Section 1367 is entirely wrong. Remove that premise, and Respondents have essentially nothing to say about either the incoherent results produced by their reading of Section 1367 or about the statute's legislative history.

The legislative history in this case is supportive of a result that is consistent with the statutory language and that avoids otherwise undisputed incoherence. *Cf. Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 527 (1989) (Scalia, J., concurring in the judgment) ("I think it entirely appropriate to consult all public materials, including the background of Rule 609(a) and the legislative history of its adoption, to verify that what seems to us an unthinkable disposition . . . was indeed unthought of . . . ."). Indeed, it is so manifestly clear that Congress had no intent to change pre-existing law that well-established principles of construction — completely ignored by Respondents — would themselves require rejection of the Fifth Circuit's holding.[6] In the end, however, no such question need be confronted. The matter-in-controversy rule of Section 1332, clearly referenced in diversity cases by Section 1367's original jurisdiction prerequisite, can and should be read in a way that reflects the clear message of the legislative history that Congress had no intent to change the rule of *Zahn*.

6. As Petitioners set forth in their opening brief, *see* Pet. Br. at 36, where the text of a statute, literally applied, would "produce a result demonstrably at odds with the intentions of its drafters," then "the intention of the drafters, rather than the strict language, controls." *United States v. Ron Pair Enters.*, 489 U.S. 235, 242 (1989); *Ardestani v. INS*, 502 U.S. 129, 135-36 (1991) (same); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 n.12 (1987) (same); *Griffin v. Oceanic Contractors*, 458 U.S. 564, 571 (1982) (same); *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980) (same). Thus, even if this Court accepted Respondents' position on the text of Section 1367, and concluded that the statute was neither ambiguous nor absurd, it would still be appropriate to overturn the decision below because it is contrary to clearly expressed congressional intent. Respondents are completely silent on this authority.

Respondents' description of the statute's history, to the extent it conveys any lesson at all, reinforces that conclusion. Respondents must reach well past anything said by a congressional committee or member of Congress to point to the fact that a Subcommittee (the "Study Subcommittee") of the Federal Courts Study Committee (the "Study Committee") initially proposed a version of Section 1367(a) that used claim-specific language and that the Study Subcommittee stated was intended to overrule *Zahn*. *See* Resp. Br. at 30.[7] But, as Respondents concede, this initial draft was not even considered, let alone accepted, by any Committee of Congress or Congress as a whole, for the simple reason that the Study Committee's report to Congress did not include the text of the Study Subcommittee's proposed statute. *See* Resp. Br. at 33-35.

Instead, Congress "immediately rejected" the Study Committee's controversial proposals. *See id.* at 33. After hearings, and further drafts, the House Judiciary Committee's Subcommittee on Courts, Intellectual Property and the Administration of Justice drafted what became Section 1367. *Id.* As Respondents concede, it was this bill (and not any earlier drafts) that was considered by Congress and passed into law. *See id.* at 34. Contrary to Respondents' contention, this final version of the bill is not "identical in all relevant respects to the draft prepared by the [Study] Subcommittee." *Id.* Rather, the drafters of the final version did not choose the claim-specific language of the Study Subcommittee's proposal, *see* note 7, *supra*, so that the statute contains a

7. The proposal used language different from the ultimate language of Section 1367(a), apparently trying to make all original jurisdiction based on individual claims in isolation: "in any civil action *on a claim for which* jurisdiction is provided" supplemental jurisdiction over related claims may be appropriate." Resp. Br. at 30 (emphasis added). But this language, which Respondents mirror in their own rewrite of Section 1367, *see* Resp. Br. at 9, was not accepted by any congressional committee, let alone by the entire Congress.

broader original jurisdiction predicate for supplemental jurisdiction: what is required is original jurisdiction over the "civil action." *See* 28 U.S.C. § 1367. The broader language indicates, if anything, a rejection of any intent to overturn *Zahn* through claim-specific language.

In any event, the very brevity of the consideration given to Section 1367 by the full Congress renders Respondents' claim that Congress meant to overturn *Zahn* completely implausible. As this Court has recognized in another context, it is extremely unlikely that Congress would pass a statute that it understood to overturn settled Supreme Court jurisprudence, expand a historically disfavored form of federal jurisdiction at the expense of state sovereignty, and sharply add to the burdens of the federal judiciary, with little discussion, no debate, and no positive indication of any such intent. *See American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 613-14 (1991) ("If this amendment had been intended to place the important limitation on the scope of the Board's rulemaking powers that petitioner suggests, we would expect to find some expression of that intent in the legislative history."). This silence, in this context, is surely telling. "Judges as well as detectives may take into consideration the fact that a watchdog did not bark in the night." *Harrison v. PPG Indus.*, 446 U.S. 578, 602 (1980) (Rehnquist, J., dissenting)

Moreover, Respondents' view of the legislative history is belied by the relevant congressional committee's specific and final statement that it did not intend for Section 1367 to alter the *Zahn* result, which it viewed as a requirement of original jurisdiction, citing Section 1332. *See* Pet. Br. at 29-30. Respondents contend that this Court should ignore this plain statement of intent because it is "divorced from the text of the statute." Resp. Br. at 28. But this analysis misconceives Petitioners' argument. Petitioners contend that the legislative history demonstrates that Congress did *not* intend to overrule *Zahn*; there is no reason to expect that this *absence* of intent would be tied to particular language in the statute. Indeed, it

would defy common sense to require that Section 1367 set forth all of the things Congress did *not* intend the statute to do.

In addition, even accepting Respondents' premise, their analysis is incorrect. Section 1367's reference to original jurisdiction over a "civil action" refers the reader to the applicable jurisdiction-conferring statute, in this case 28 U.S.C. § 1332. The terms of Section 1332, as construed by this Court, then control the outcome of this case, because it is Section 1332's language that determines whether the federal courts have original jurisdiction in diversity cases. The House Committee's statement that it did not intend *Zahn* to be overruled is thus a statement of how the House Committee interpreted the original jurisdiction requirements of Section 1332, including the matter-in-controversy requirement. Given that this interpretation is in accord with the statutory language, supported by the relevant case law, reflects a long history of years of congressional policy limiting diversity jurisdiction, and allows Section 1367 to operate coherently, there is no reason this Court should not give effect to this clearly expressed congressional intent.

V. SECTION 1367 DOES NOT SUPPLY THE CLEAR CONGRESSIONAL MANDATE REQUIRED TO EFFECT THE MAJOR EXPANSION IN THE NUMBER OF DIVERSITY CASES THAT OVERTURNING *ZAHN* WOULD PRODUCE.

This Court has repeatedly stated that it will not expand the reach of diversity jurisdiction absent a clear congressional mandate to do so. *See Snyder*, 394 U.S. at 339 ("Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the [diversity] statute has defined.") (*quoting Healy v. Ratta*, 292 U.S. 263, 270 (1934)). This canon of interpretation is of a piece with the general rule that jurisdictional statutes must be construed narrowly because federal courts are courts of limited jurisdiction. *See, e.g., Finley*, 490 U.S. at 550;

cf. Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 243 (1985) (where "the courts themselves must decide whether their own jurisdiction has been expanded . . . we rely only on the clearest indications in holding that Congress has enhanced our power"). Respondents do not (and cannot) point to any such clear congressional mandate. To the contrary, their whole argument regarding the proper characterization of the matter-in-controversy rule rests on the jurisdictional remedy stated in *Zahn* and its forbears that, as set forth above, cuts neither way.

Respondents suggest that their interpretation of Section 1367 would not expand diversity jurisdiction, but would only increase the reach of supplemental jurisdiction. *See* Resp. Br. at 20. This suggestion is a patent distraction from the real jurisdictional stakes. This Court's decision to accept Respondents' interpretation of Section 1367 would greatly expand the use of diversity jurisdiction, vastly increasing both the number and size of diversity cases being decided in federal court because (as Respondents' *amici's* enthusiasm makes clear) many defendants faced with class actions in state court would remove those actions to a federal forum. Indeed, in nearly all cases, one of the parties would prefer a federal forum, meaning that the large majority of cases that fall within federal diversity jurisdiction will be filed in or removed to federal court. This would have the inevitable result of increasing the number of times federal courts will be forced to decide questions of state law better and more appropriately addressed by the state courts. Such a result is inconsistent with two centuries of congressional policy. Accordingly, this Court should now, as it has in the past with Congress's approval, resolve any doubts about the proper interpretation of Sections 1367 and 1332 in favor of limiting the reach of federal power in diversity cases.

In sum, Petitioners' understanding of Section 1367 and its interrelationship with the matter-in-controversy rule is in accord with the plain language of Section 1367, sensibly construes Section 1332 to give parallel treatment to its complete-diversity

and matter-in-controversy rules, is consistent with the prior decisions of this Court, and permits statutory coherence. Respondents instead invite this Court to read Section 1367's reference to original jurisdiction effectively to attribute to Congress an intent to overturn settled law and create an incoherent jurisdictional scheme that Congress manifestly did not have. Because the statute is easily read to avoid such a result, this Court should decline that invitation.

CONCLUSION

For the foregoing reasons, and the reasons stated in Petitioners' opening brief, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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